

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G. MEMO VERA,

Petitioner,

v.

CHRISTIAN PFEIFFER,

Respondent.

No. 1:23-cv-00884-KES-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
RESPONDENT'S MOTION TO DISMISS,
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS WITHOUT PREJUDICE,
DENYING PETITIONER'S MOTION TO
AMEND FINDINGS, DIRECTING CLERK
OF COURT TO CLOSE CASE, AND
DECLINING TO ISSUE CERTIFICATE OF
APPEALABILITY

(Docs. 9, 17, 20)

Petitioner G. Memo Vera is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 18, 2024,¹ the assigned magistrate judge issued findings and recommendations recommending that respondent's motion to dismiss be granted and the petition be dismissed without prejudice for failure to exhaust state judicial remedies. Doc. 17. The findings and recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. *Id.* On February 2, 2024, petitioner filed timely objections. Doc. 19. On February 12, 2024, petitioner

¹ The findings and recommendations were signed on January 17, 2024, but not docketed until January 18, 2024.

1 filed a motion to amend the findings and recommendation. Doc. 20.

2 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the court has conducted a de
3 novo review of the case. Having carefully reviewed the file, including petitioner's objections, the
4 court holds the findings and recommendations to be supported by the record and proper analysis.

5 Having found that petitioner is not entitled to habeas relief, the court now turns to whether
6 a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus has no
7 absolute entitlement to appeal a district court's denial of his petition, and an appeal is allowed
8 only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.
9 § 2253. Where, as here, the court denies habeas relief on procedural grounds without reaching
10 the underlying constitutional claims, the court should issue a certificate of appealability "if jurists
11 of reason would find it debatable whether the petition states a valid claim of the denial of a
12 constitutional right and that jurists of reason would find it debatable whether the district court was
13 correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "Where a plain
14 procedural bar is present and the district court is correct to invoke it to dispose of the case, a
15 reasonable jurist could not conclude either that the district court erred in dismissing the petition or
16 that the petitioner should be allowed to proceed further." *Id.*

17 In the present case, the court finds that reasonable jurists would not find the Court's
18 determination that the petition should be dismissed debatable, wrong, or deserving of
19 encouragement to proceed further. Therefore, the court declines to issue a certificate of
20 appealability.

21 Accordingly:

- 22 1. The findings and recommendations issued on January 18, 2024, Doc. 17, are adopted
23 in full;
- 24 2. Respondent's motion to dismiss, Doc. 9, is granted;
- 25 3. Petitioner's motion to amend the findings, Doc. 20, is denied;
- 26 4. The petition for writ of habeas corpus is dismissed without prejudice;

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1 5. The Clerk of Court is directed to close the case; and

2 6. The court declines to issue a certificate of appealability.

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5 IT IS SO ORDERED.

6 Dated: September 30, 2024


UNITED STATES DISTRICT JUDGE